

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 365 of 1997

in

MISC.CIVIL APPLICATION No 428 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT MARITIME BOARD

Versus

BK MAKWANA

Appearance:

MS SEJAL K MANDAVIA for Petitioner
MR.PARESH UPADHYAY for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

Date of decision: 23/04/97

ORAL JUDGEMENT (C.K.THAKKER J)

1. Miss Mandavia prays that respondent nos.2 to 4 may be permitted to be deleted as the appellant does not claim any relief from them and they will not be affected by the final outcome of this Letters Patent Appeal.

Prayer is granted. Respondents 2 to 4 are ordered to be deleted. in view of the fact that they will not be affected by the final outcome of this Letters Patent Appeal. Prayer granted.

2. Admitted. Mr.Upadhyay, learned counsel for the original respondent no.1, now sole respondent appears and waives service of notice of admission. In the facts and circumstances of the case, the Letters Patent Appeal is taken up for final hearing to day.

3. This appeal is directed against an order dt. March 13, 1997 passed by the learned Single Judge in Civil Application No.1467 of 1997 as also in Misc.Civil Application No. 428 of 1997 in that Civil Application filed in Special Civil Application No. 10002 of 1990.

4. Civil Application No.428 of 1997 was filed by the respondent-employee in which prayer was made in para 5 which reads as under:

"(A) direct the respondent authorities to consider the name of the applicant for promotion to the post of Executive Engineer, as per seniority positions determined by the respondent Authorities, for the cadre of Deputy Executive Engineer, and

(B) grant any other and further relief, which the Honourable Court may consider as fit and proper."

The learned Single Judge observed that "since two posts of Executive Engineer were required to be filled in from the lower cadre of Deputy Executive Engineer and as the name of the applicant was at Sr.No.8 in the wait list of the Deputy Executive Engineer and since the promotion was effected upto 6, his case was required to be considered by the Gujarat Maritime Board, appellant herein. A direction was, therefore, issued to the appellant Board consider the case of the applicant in accordance with law for the post of Executive Engineer.

5. That order was passed on February 25, 1997. A review application came to be filed by the present appellant, inter alia, pointing out that out of two posts too be filled in, one was earmarked for Reserved Category and hence only one general post of Executive Engineer is available. According to Maritime Board, one person senior to the applicant respondent herein) is very much

at Sr.No.7 and hence the learned Single Judge has committed an error in directing the Board to consider the case of the respondent.

6. We have heard Miss Mandavia, as also Mr.Upadhaya. Looking to the facts stated and averments made in Misc. Civil Application No.428 of 1997, it is clear that two posts are to be filled in. But one post is earmarked for reserved class and hence only one post is available for general class. In these circumstances, in our opinion, the learned Single Judge has committed an error in directing the Maritime Board to consider the case of the respondent. The respondent is admittedly Junior to a person who is placed at Sr.no.7 in the seniority list.

7. Mr.Upadhay, no doubt, contended that two persons who were already promoted as Executive Engineer were promoted contrary to law. In fact even in the order of promotion, it was stated that in promotion would be operative with a subsequent date. They, therefore, ought to have been shown junior to the respondent and thus, injustice has been meted out to the respondent. Prima facie, there is some substance in what Mr.Upadhyay contends. But in our opinion, the matter is already admitted and rule is issued. Hence, that question can be decided at the time of final hearing. At present, no direction ought to have been issued by the learned Single Judge in the light of the position discussed hereinabove and hence, the order passed in Civil Misc.Application No.1467 of 1997 and Misc.Civil Application No. 428 of 1997 are hereby quashed and set aside and the Civil Application No. 1467 of 1997 stands dismissed.

The learned counsel for the petitioner is at liberty to request the learned Single Judge for expeditious disposal of the main matter.

Miss Mandavia, learned counsel for the appellant herein assures the court that the Board will file affidavit immediately.

In the result, the Letters Patent Appeal is allowed to the above extent with no order as to costs.
